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UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

BILLY MITCHELL,	)	
	)	Civil Action No.
	)	
Plaintiffs,	)	
	)	COMPLAINT
vs.	)	AND JURY DEMAND
	)	
THE CARTOON NETWORK, INC., a	)	
New York Corp., CARTOON NETWORK	)	
STUDIOS, INC., a Georgia Corporation,	)	
TURNER BROADCASTING SYSTEM,	)	
INC., a Georgia Corporation, John Does 1	)	
through 10, fictitious designations,	)	
	)	
Defendants.	)	

The Plaintiff, Billy Mitchell, located at 4799 Hollywood Boulevard, Hollywood, Florida, by way of Complaint against the Defendants herein named, says:

INTRODUCTION

1. This action arises out of the Defendants unauthorized advertisement, usage, and sale of products bearing the identity and likeness of Plaintiff, Billy Mitchell, in willful and conscious disregard of the rights of the Plaintiff. As a proximate result of Defendants' conduct, Plaintiff has sustained and will

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continue to sustain injury and damages, in an amount to be proved at trial.

2. Defendants' unauthorized advertisement, usage and sale of products, specifically the "Regular Show" utilize the identity and likeness of Plaintiff. This misappropriation was done in complete disregard of the rights of Plaintiff, and with the intent of increasing the sales and profits for the Defendants.

3. Through Defendants' courses of action and non action, Defendants have caused and will continue to cause injury and damage to Plaintiff in an amount to be proved at trial.

4. Accordingly, Plaintiff brings this suit to stop Defendants from continuing unlawful courses of conduct and recover all monetary losses Defendants have caused to Plaintiff.

#### PARTIES

5. Plaintiff hereby incorporates by reference the allegations contained in the foregoing paragraphs as if fully set forth herein.

6. Plaintiff, Billy Mitchell, is a resident of the State of Florida, located at 4799 Hollywood Boulevard, Hollywood, Florida.

7. Upon information and belief, Defendant, The Cartoon Network, Inc., (hereinafter "CN"), is a corporation organized and existing under the laws of the State of New York, with its principal place of business located at 75 Rockefeller Plaza, New York, New York. CN is a multi million dollar entertainment channel, owned by the Turner Broadcasting System, Inc., division of Time Warner. CN is available to approximately 96.4 million paid television households in the United States, and broadcasts the "Regular Show" as part of its broadcasting profile.

8. Upon information and belief, Defendant, Cartoon Network Studios, Inc., (hereinafter "CNS") is a corporation organized and existing under the laws of the State of Georgia, with its principal place of business located at One CNN Center, Atlanta, Georgia. CNS is an American animation studio, and a subsidiary of the Turner Broadcasting System, Inc., and focuses on producing and developing

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animated programs for the CN. CNS has produced and developed the program known as the “Regular Show”.

9. Upon information and belief, Defendant, Turner Broadcasting System, Inc., (hereinafter “TBS”), is a corporation organized and existing under the laws of the State of Georgia, with its principal place of business located at One CNN Center, Atlanta, Georgia. TBS is a multi million dollar media conglomerate and subsidiary of Time Warner, and the parent company and owner of CN and CNS.

10. At all times herein, John Does 1 through 10, inclusive, are fictitious names for individuals, partnerships, joint ventures, corporation, limited liability corporations or other form of legal entities, the identities of which are unknown at the present but who are liable to the Plaintiff for committing the acts and/or omissions mentioned herein. The Doe Defendants specifically include all members of upper management of CN, CNS and TBS who participate in or failed to remedy the wrongful acts.

11. Whenever in this Complaint and Demand for Jury Trial reference is made to any act or omission of corporate Defendants, partnership or any other entity, such allegations shall be deemed to mean that the directors, officers, agents, employees, distributors, partners, contractors, thirty party sales agencies or representatives of said corporate Defendants, partnership or other entity did, authorized, or commenced such act or omission while actively engaged in the management, operation, control or representation of the affairs of said corporate Defendants, partnership or entity, and while acting with the course and scope of their agency, distributorship, contract, employment, representation and capacity.

#### JURISDICTION AND VENUE

12. Plaintiff and hereby incorporates by reference the allegations contained in the foregoing paragraphs as if fully set forth herein.

13. This is a civil action arising under the laws of the State of New Jersey. Jurisdiction is proper in this Court pursuant to diversity of citizenship under 28 U.S.C. §1332 the applicable Federal

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Rules of Civil Procedure, and the damages suffered and sought to be recovered herein total in excess of \$75,000.00 exclusive of interest and costs herein.

14. Personal jurisdiction of the Defendants is proper because, at all times material, Defendants have had purposeful and continuous, systematic contacts in or affecting the State of New Jersey.

15. Venue is proper in this Court under 28 U.S.C. §139(b), because all of the Defendants, as well as the Plaintiff, transact business in New Jersey, and New Jersey is a convenient forum given the complete diversity between the location of the parties.

FACTUAL ALLEGATIONS FOR ALL COUNTS

16. Plaintiff hereby incorporates by reference the allegations contained in the foregoing paragraphs as if fully set forth herein.

17. Plaintiff, Billy Mitchell, is a world wide recognized figure in the gaming community, as is evidenced by the following awards, accolades and recognitions:

- A. July, 1982 - Billy Mitchell recognized as world champion on Donkey Kong.
- B. November 6, 1982 - Billy Mitchell scores 874,500 points on Donkey Kong at Twin Galaxies during LIFE Magazine photo shoot. Records stands until 2000.
- C. November 7, 1982 - Billy Mitchell photographed by LIFE Magazine in legendary photograph.
- D. January 8, 1983 - Billy Mitchell invited to be one of the hand-picked superstars to compete in That's Incredible Video Game Olympics. Due to family responsibilities, he must decline.
- E. April 9, 1983 - Billy Mitchell feature interview in Miami Herald.
- F. July 15, 1983 - Billy Mitchell chosen as superstar to perform as gaming celebrity at

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The Electronic Circus in Boston.

- G. July 25, 1983 - Billy Mitchell selected to be one of the six founding members of the U.S. National Video Game Team.
- H. August 11, 1983 - Billy Mitchell chosen as one of five video game players to tour the USA as a charity fund-raiser for Cystic Fibrosis.
- I. September, 1983 - Billy Mitchell chosen to represent the video gamers of America in Washington DC, as official video game challenges were presented to the Japanese and Italian Embassies.
- J. January 14, 1984 - Billy Mitchell was selected as one of the 1983 "Video Game Players of the Year" by Twin Galaxies and the U.S. National Video Game Team.
- K. January 12, 1985 - Billy Mitchell appointed Twin Galaxies referee at Twin Galaxies 1985 World Championship, Capt. Video Arcade, Los Angeles, CA.
- L. November, 1985 - Billy Mitchell reopens the historic Twin Galaxies Arcade on Ottumwa, Iowa and keeps it alive for 5 years.
- M. February 8, 1998 - Billy Mitchell is leading character in Walter Day's book: The Golden Age of Video Game Arcades.
- N. May 7, 1999 - Billy Mitchell is co-founder of the classic gaming tournament inaugurated at the Funsport arcade in New Hampshire.
- O. July 3, 1999 - Billy Mitchell achieves history's first "perfect" score on Pac-Man.
- P. September 15, 1999 - Billy Mitchell is honored as the Video Game Player of the Century on the Namco stage at the 1999 Tokyo Game Show.
- Q. November 24, 1999 - Billy Mitchell offered \$100,000.00 to the first person who could get the Pac-Man's "split-screen level". The prize was never claimed before the

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January 1, 2000 deadline.

- R. February 4, 2000 - Billy Mitchell appears on the "Man Show" in Los Angeles, CA.
- S. February 5, 2000 - Billy Mitchell filmed by G4TV in Los Angeles, CA.
- T. July 22, 2001 - Billy Mitchell co-emcees the 2001 Twin Galaxies Video Game Festival at the Mall of America.
- U. July 20, 2002 - Billy Mitchell co-emcees the 2001 Twin Galaxies Video Game Festival at the Mall of America.
- V. November 27, 2004 - Billy Mitchell featured at Dream Hack Winter 2004 as "Credible Witness" for Guinness World Records for "Largest LAN Claim".
- W. August 12, 2005 - Billy Mitchell featured star at the Classic Gaming Expo - UK, in Croydon, UK.
- X. August 15, 2005 - Billy Mitchell leads a contingent of British and American gamers to Paris to issue a challenge for a London v. Paris video game championship.
- Y. June 21, 2006 - MTV selected Billy Mitchell one of "The 10 Most Influential Video Gamers of All Time". He was also nominated as leader of the Nerd Herd.
- Z. January 22, 2007 - Billy Mitchell stars in two movies released as Sundance Film Festival and Slamdance Film Festival: The King of Kong and Chasing Ghosts.
- AA. June 1, 2007 - Billy Mitchell feature interview on MTV.com.
- BB. June 4, 2007 - Billy Mitchell placed eighth in the Microsoft Xbox 260 Pac-Man World Championship in New York City.
- CC. 2008 - Billy Mitchell became the first video game player to be honored with a Topps Allen & Ginter trading card.
- DD. August 7, 2010 - Billy Mitchell retakes the world records on Both Donkey Kong and

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Donkey Kong, Jr.

- EE. August 8, 2010 - Billy Mitchell inducted into the International Video Game Hall of Fame, in Ottumwa, Iowa.
- FF. February 3, 2011 - Billy Mitchell opens The King of Kong Arcade at the Orlando International Airport.
- GG. February 5, 2011 - Billy Mitchell chosen to be first video game player portrayed on trading card set founded by Walter Day. He is assigned card #1.
- HH. May 16, 2012 - Billy Mitchell featured star at Smithsonian Institute's World Premiere of The Art of Video Games Exhibit.
- II. August 10, 2013 - Billy Mitchell honored in an Art Gallery Exhibition titled "Video Game Posters and Trading Cards of Twin Galaxies". The posters and hot sauce labels he had commissioned for the video games and pinball industries were featured as works of art and Billy Mitchell was the co-emcee of the Awards Ceremonies held in conjunction with this event in the Stephen Sondheim Center for the Performing Arts.
- JJ. August 2, 2014 - Billy Mitchell honored for the 2<sup>nd</sup> year in an Art Gallery Exhibition titled "Video Games Posts and Trading Cards of Twin Galaxies". The posters and hot sauce labels he had commissioned for the video games and pinball industries were featured as works of art and Billy Mitchell was the co-emcee of the Awards Ceremonies held in conjunction with this event in the Stephen Sondheim Center for the Performing Arts.
- KK. September 25, 2014 - Billy Mitchell featured interview in Broward New Times, Fort Lauderdale, FL.
- LL. November 7, 2014 - Billy Mitchell featured star at Houston Arcade Expo.

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- MM. January 16 ,2015 - Billy Mitchell featured star at Arcade Expo, Banning, CA.
- NN. January 17, 2015 - Billy Mitchell feature at Arcade Expo as “Credible Witness” for Guinness World Records for “Pinball Claim”.
- OO. February 12, 2015 - Billy Mitchell featured interview in Paste Magazine Online.
- PP. February 20, 2015 - Billy Mitchell featured star at Florida Arcade & Pinball Expo.
- QQ. March 12, 2015 - Billy Mitchell interview in Fort Lauderdale Sun Sentinel, Fort Lauderdale, FL.
- RR. April 11, 2015 - Billy Mitchell featured star at 2014 Classicarcadegaming.com Tournament, Cincinnati, OH.
- SS. May 30, 2015 - Billy Mitchell featured at Galloping Ghost Arcade (Chicago), as “Credible Witness” for Guinness World Records for “Largest Arcade Claim”.

18. During the course of Plaintiff, Billy Mitchell’s extensive career in the gaming industry, he has developed a unique persona and appearance, one which is highly recognizable in the gaming world. That appearance includes his long black hair and black beard, together with his recognizable black suit, black shirt, and American flag tie. Plaintiff, Billy Mitchell, never appears out of his professional character, including his garb and appearance, at any appearance involved in the gaming industry.

19. In addition, Plaintiff, Billy Mitchell, has certain expressions and call words which are unique to his persona. Defendants, CN and CNS, have developed a television show entitled “Regular Show” which utilizes a character named Garrett Bobby Ferguson (GBF), which character is clearly based exclusively on the likeness, appearance, mannerism and persona of Billy Mitchell.

20. The Defendant, TBS, as the owner of CN and CNS, has endorsed this unauthorized usage of the likeness of Billy Mitchell, and all three Defendants have profited enormously from said usage.

21. Plaintiff, Billy Mitchell, did not grant permission to the Defendants, or any of them, to



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use his identity or likeness in the “Regular Show” and Defendants profited without Plaintiff’s consent, permission or other form of authorization.

22. Due to Defendants, CN, CNS and TBS, unauthorized utilization, advertisement, and sale of products bearing the identity and likeness of Plaintiff, Billy Mitchell, and wilful and conscious disregard of the rights of the Plaintiff, Plaintiff has sustained and will continue to sustain injury and damages, in an amount to be proved at trial.

23. Defendants, CN, CNS and TBS have misappropriated and incorporated Plaintiff, Billy Mitchell’s identity and likeness into its episodes of the “Regular Show” from February 7, 2011 to the present, and have further misappropriated and incorporated Plaintiff, Billy Mitchell’s identity and likeness in ancillary product sales.

24. Unquestionably, Defendants, CN, CNS and TBS have copied, recreated and otherwise misappropriated Plaintiff, Billy Mitchell’s identity and likeness without his consent, authorization or permission.

25. Such misappropriation of Billy Mitchell’s identity and likeness was committed with the full intent of increasing the sales and profits for the Defendants, particularly within the gaming community. The misappropriation of Billy Mitchell’s identity and likeness helped to legitimize the Defendants show known as “Regular Show”, by utilizing the image and likeness of the most recognized individual in the world in the gaming community.

#### COUNT I

##### Invasion of Privacy - Misappropriation of Identities and Likenesses.

26. Plaintiff and hereby incorporates by reference the allegations contained in the foregoing paragraphs as if fully set forth herein.

27. Defendants, CN, CNS and TBS produced the “Regular Show” which includes the

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character named Garrett Bobby Ferguson (GBF) which is a direct misappropriation of the image and likeness of Plaintiff, Billy Mitchell.

28. Defendants, CN, CNS and TBS extensive usage of Plaintiff, Billy Mitchell's identity and likeness translates directly into increased sales, viewer ship and product sales, and therefore, increased revenues for CN, CNS and TBS, by meeting the demands of consumers for a realistic "villain" in the "Regular Show", as well as an endorsement for the gaming community.

29. Through the Defendants, CN, CNS and TBS courses of action and non action, CN, CNS and TBS, have caused and will continue to cause injury and damage to Plaintiff in an amount to be proved at trial.

30. Accordingly, Plaintiff seeks to recover all monetary losses which Defendants have caused to Plaintiff.

## COUNT II

### DEFENDANTS, CARTOON NETWORK, CARTOON NETWORK STUDIES AND TURNER BROADCASTING SYSTEM, INC., MISAPPROPRIATION OF PLAINTIFF'S IDENTITY AND LIKENESS OS FOR A COMMERCIAL/TRADE PURPOSE (INFRINGEMENT)

#### A. Plaintiff Never Consented to Defendants' Use of His Likeness or Identity.

31. Plaintiff and hereby incorporates by reference the allegations contained in the foregoing paragraphs as if fully set forth herein.

32. Plaintiff has never authorized, consented to or otherwise given permission to the Defendants, CN, CNS and TBS regarding use of his identity or likeness in connection with the "Regular Show".

#### B. Heightened Realism is Generated Through the Use of Plaintiff Billy Mitchell's Identity and Likeness To Meet the Demand of Cartoon Viewers and Thus Increase Sales and Profits of Defendants, Cartoon Network, Cartoon Network Studios and Turner Bro

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33. Plaintiff and hereby incorporates by reference the allegations contained in the foregoing paragraphs as if fully set forth herein.

34. The Defendants, CN, CNS and TBS usage of the image and likeness of Plaintiff, Billy Mitchell is done to offer a realistic depiction of a video gamer who is recognized throughout the world

35. Defendants, CN, CNS and TBS use of Plaintiff's identity and likeness is for purposes other than the dissemination of news and/or information. Defendants, CN, CNS and TBS misappropriation of such is largely for commercial/trade purposes.

36. The inherent value of Plaintiff, Billy Mitchell's identity and likeness is that using such increases the authenticity and realness of the "Regular Show", and makes it more attractive to consumers, including the gaming community.

37. It cannot be questioned that the misappropriation of Plaintiff, Billy Mitchell's identity and likeness by Defendants was for the purpose of heightening the authenticity and realism of the "Regular Show", and capitalizing on the popularity of Plaintiff, Billy Mitchell, which, in turn, increases the number of viewers of the "Regular Show" as well as product purchasers.

38. It is unjust that fair compensation has been denied to Plaintiff, Billy Mitchell, for the use of his identity and likeness in the "Regular Show", and that the Defendants, CN, CNS and TBS have profited from same.

39. As a result of the Defendants, CN, CNS and TBS courses of action and non-action, Defendants have caused and will continue to cause injury and damage to Plaintiff in an amount to be proved at trial.

40. Accordingly, Plaintiff brings this suit to stop Defendants from continuing unlawfully courses of conduct and to recover all monetary losses Defendants have caused to Plaintiff.

PRAYER FOR RELIEF

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WHEREFORE, Plaintiff prays for judgment against the Defendants as follows:

- A. Actual damages, statutory damages, punitive damages and such other relief as provided by the statutes cited herein;
- B. Disgorgement of all profits earning by Defendants from the production, sale and broadcast of the "Regular Show" containing the identity and likeness of Plaintiff.;
- C. Prejudgment and post-judgment interest on such monetary relief;
- D. Equitable relief in enjoining future use of the identity or likeness of Plaintiff in the "Regular Show";
- E. The costs of bringing this suit including reasonable attorneys' fees; and
- F. All other relief to which Plaintiff may be entitled to law or in equity.

JURY DEMAND

PLEASE TAKE NOTICE that the Plaintiffs demand a jury on all issues in the within matter.

BY:

  
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ROBERT A. BALLARD, JR.  
Attorney for Plaintiffs

Dated: July 17, 2015